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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Charles H Landwer,

10 Plaintiff,

11 v.

12 Royal Neighbors of America, et al.,

13 Defendants.
14

No. CV-24-03134-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Charles H. Landwer's ("Plaintiff") motion for
16 extension of time to serve the summons and the complaint. (Doc. 15). For the following
17 reasons, the Court will grant the motion.

18 **I. ANALYSIS**

19 **a. Notice of Proof of Service: Defendant Royal Neighbors of America**

20 After filing his motion for extension of time for service, Plaintiff filed a notice of
21 proof of service for Defendant Royal Neighbors of America ("Royal Neighbors"). (Doc.
22 19). Because Royal Neighbors is domiciled in Illinois, (Doc. 1 at 3), it is a foreign insurer
23 under state law¹ and service of process "shall be made **only** by service of process upon the
24 director."² Ariz. Rev. Stat. § 20-221(B) (emphasis added). In this context, "director" means

25 ¹ Royal Neighbors is listed in the Arizona system of the National Association of Insurance
26 Commissioners as having a domicile type of "foreign," in the state of Illinois. *Company*
27 *Lookup*, Nat'l Ass'n of Ins. Comm'rs, <https://sbs.naic.org/solar-external-lookup/lookup/company/summary/49209336?jurisdiction=AZ> (last visited March 25,
28 2025).

² Because serving the Director of the Arizona Department of Insurance and Financial
Institutions is the only way to effectuate service upon Royal Neighbors under Arizona law,
the Court need not address Plaintiff's attempt to serve Royal Neighbors directly via

1 the Director of the Arizona Department of Insurance and Financial Institutions (“ADIFI”).

2 Plaintiff claims that the summons and complaint “were provided” to the Director of
3 the ADIFI on March 12, 2025. (Doc. 19 at 2). However, Plaintiff does not say *who* provided
4 the summons and the complaint to the Director. Under Federal Rule of Civil Procedure
5 4(c)(2), a party to the lawsuit may not serve the summons and complaint. In other words,
6 service of process is not complete if Plaintiff himself served the Director. Without proof
7 that someone other than Plaintiff completed service, the Court does not find service
8 completed at this time. The Court will therefore consider Plaintiff’s motion for extension
9 of time for service as it pertains to all three Defendants.

10 **b. Motion for Extension of Time**

11 **i. Legal Standard**

12 There are two ways that the Court may extend the time for service set by Federal
13 Rule of Civil Procedure 4(m). *See Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir.
14 2009).

15 The first is mandatory. Based upon the plain language of that Rule, “the district
16 court **must** extend time for service upon a showing of good cause.” *Lemoge*, 587
F.3d at 1198.

17 The second is discretionary. Notwithstanding Rule 4(m), “if good cause is not
18 established, the district court **may** extend time for service upon a showing of
excusable neglect.” *Id.*

19 Engaging in the two-step analysis which the Ninth Circuit requires, the court will
20 first consider whether on this record there is good cause, thus mandating an
extension of time for service under Rule 4(m). *See In re Sheehan*, 253 F.3d at 512.
21 Courts must determine whether good cause “has been shown on a case by case
basis.” *Id.*

22 *Trueman v. Johnson*, No. CV 09-2179-PHX-RCB, 2011 WL 6721327, at *3 (D. Ariz. Dec.
23 21, 2011) (cleaned up).

24 **ii. Analysis**

25 Plaintiff “believes he can show good cause for the failure to timely serve Defendants
26 Royal Neighbors of America and US Funeral Expenses,”³ and he says that his “inability to
27

certified mail. (See Doc. 19 at 2-3).

28 ³ For an unknown reason, Plaintiff omitted reference here to Defendant John Doe I, referred
to as Thomas Greene in the complaint.

1 effectuate timely service is not attributable to [his] lack of diligence or efforts but rather
2 the efforts of the Defendants in evading service.” (Doc. 16 at 7). The Court will first
3 analyze whether Plaintiff has made a showing of good cause such that a mandatory
4 extension of time is warranted. If the Court finds Plaintiff has not shown good cause, the
5 Court still may grant the motion under its discretionary power.

6 “Good cause to avoid dismissal may be demonstrated by establishing, at minimum,
7 excusable neglect.” *Trueman*, 2011 WL 6721327, at *3 (quoting *Lemoge*, 587 F.3d at 1198
8 n. 3). “To determine whether the plaintiff’s failure to serve constitutes ‘excusable neglect,’
9 the court should examine the following factors: (1) the danger of prejudice to the defendant;
10 (2) the length of the delay and its potential impact on the judicial proceedings; (3) the
11 reason for the delay; and (4) whether the movant acted in good faith.” *Pember v. Ryan*, No.
12 CV-11-2332-PHX-SMM, 2014 WL 3397735, at *3 (D. Ariz. July 11, 2014). The Court
13 should also consider whether the party to be served received actual notice of the suit and
14 whether Plaintiff would suffer severe prejudice if the complaint were dismissed. *Lemoge*,
15 587 F.3d at 1198.

16 Here, Plaintiff generally argues that “[t]he Defendants would not suffer any harm
17 or prejudice if the Plaintiff were allowed an additional period of time to serve them”
18 because “[a]ll the Defendants are aware of the pending matter and have received a copy of
19 the Summons and Complaint.” (Doc. 16 at 7). The Court agrees that any prejudice to the
20 defendants is minimal. Conversely, Plaintiff argues that he “would suffer prejudice if the
21 matter were dismissed” because he “would be forced to refile the matter” and would have
22 to re-attempt to serve Defendants which would result in him “be[ing] in the same position.”
23 (Doc. 16 at 7). The Court agrees, but because Plaintiff would have the opportunity to refile
24 this suit, the Courts finds this factor neutral.

25 The Court adds that Plaintiff filed the complaint in this case on November 12, 2024
26 and service was originally due by February 10, 2025. Plaintiff did not serve by this
27 deadline, but instead filed a status report on February 24, 2025, (Doc. 13), in which Plaintiff
28 recounted his efforts to serve and stated that he believed he would accomplish service

1 within 60 days. The Court directed Plaintiff to file the instant motion, (Doc. 14), which
2 Plaintiff did on March 10, 2025, (Doc. 15). Plaintiff now asks the Court to give him until
3 May 15, 2025. (Doc. 16 at 9). In sum, Plaintiff asks for a total of 94 additional days to
4 effect service. The Court finds this length of delay to be insignificant. *Cf. Efaw v. Williams*,
5 473 F.3d 1038, 1041 (9th Cir. 2007) (finding seven-year delay “extraordinary”).

6 The Court also recognizes that it denied Plaintiff’s motion for service by the
7 Marshals, (Docs. 9, 12), and that Plaintiff has made subsequent efforts to serve defendants.
8 Although Plaintiff has not been successful, there is no basis for the Court to conclude that
9 Plaintiff is not acting in good faith.

10 Moreover, it appears that both Royal Neighbors and US Funeral Expenses have
11 received actual notice of the suit. Plaintiff received a United States Postal Service return
12 receipt from Hannah Lupinski of Royal Neighbors. (Doc. 16 at 4). Plaintiff also “spoke
13 with the management at Royal Neighbors of America” and has the impression that Royal
14 Neighbors will “process the Waiver of Service.” (Doc. 16 at 4-5). While this may be
15 enough to suggest that Royal Neighbors has actual notice of the suit, as the Court noted
16 above, Plaintiff may not serve Royal Neighbors via mail or a process server.

17 Plaintiff separately sent “a Waiver of Service with a copy of the Summons and
18 Complaint” to US Funeral Expenses, via certified mail with a return receipt requested.
19 (Doc. 16 at 3, 6). It does not appear that Plaintiff received a return receipt from US Funeral
20 Expenses. However, Plaintiff does claim that he “received a telephonic response” from the
21 “purported president” of US Funeral Expenses, Jubran Abdulaziz. (Doc. 16 at 4). This
22 suggests that US Funeral Expenses also has actual notice of the suit. Plaintiff also says he
23 “contracted with a Private Service of Process firm” to serve US Funeral Expenses. (Doc.
24 16 at 5). That process server seemingly made multiple attempts at service but was
25 ultimately unsuccessful. (Doc. 16 at 5). Plaintiff therefore “is in the process of contracting
26 with” a different private process server. (Doc. 16 at 6). Upon consideration of all the
27 factors, the Court finds Plaintiff has shown good cause for his delay in serving defendants.

28 Even if Plaintiff has not shown good cause, the Court can still grant Plaintiff’s

1 motion under its discretionary authority. The Ninth Circuit Court of Appeals has declined
 2 to “articulate a specific test that a court must apply in exercising its discretion under Rule
 3 4(m)[,]” noting “that, under the terms of the rule, the court’s discretion is broad.” *Gill v.*
 4 *Waikiki Lanai, Inc.*, 2011 WL 3648772, at *7 (D. Hawai’i Aug. 18, 2011) (quoting *In re*
 5 *Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001) (citation omitted)). “In making extension
 6 decisions under the court’s discretionary powers, a court may consider the excusable
 7 neglect factors as stated above, including ‘a statute of limitations bar, prejudice to the
 8 defendant, actual notice of a lawsuit, and eventual service.’” *Pember*, 2014 WL 339773, at
 9 *4 (quoting *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007)). The Court incorporates
 10 its analysis of excusable neglect above.⁴ Finding no additional considerations relevant, the
 11 Court finds an extension of time appropriate under the Court’s discretionary power.

12 **iii. Defendant John Doe I**

13 The Court notes that Plaintiff’s motion often omits reference to Defendant John Doe
 14 I, primarily referred to as “Thomas Greene” in the complaint. (*See, e.g.*, Doc. 16 at 2
 15 (“Plaintiff believes he can show good cause for the failure to timely serve Defendants
 16 Royal Neighbors of America and US Funeral Expenses.”); Doc. 16 at 9 (“Plaintiff
 17 respectfully requests an extension . . . in which to serve the Defendants, Royal Neighbors
 18 of America and US Funeral Expenses. . .”). Plaintiff does say that he “sent the *three*
 19 Defendants” the summons and complaint via certified mail, return receipt requested, but as
 20 the Court notes above, Plaintiff himself cannot serve Defendant Greene because Plaintiff
 21 is a party to the suit. *See* Fed. R. Civ. P. 4(c)(2).

22 **II. CONCLUSION**

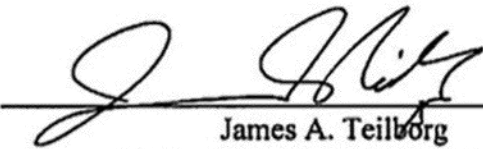
23 Accordingly,

24 **IT IS ORDERED** that the motion for extension of time to serve, (Doc. 15), is
 25 **GRANTED**. The deadline to serve Defendants Royal Neighbors of America, US Funeral

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 27 ⁴ “Since excusable neglect is the benchmark for both mandatory and discretionary
 28 extension of time, the two standards are often conflated.” *Pember*, 2014 WL 3397735, at
 *5. Here, the Court chose to analyze whether excusable neglect exists in its discussion of
 whether a mandatory extension of time must be granted. However, the same analysis is
 applicable to the Court’s decision in whether to grant a discretionary extension.

1 Expenses, and John Doe I⁵ is May 15, 2025. Any motion for alternative service or motion
2 for additional time to serve is also due by May 15, 2025. **If Plaintiff fails to comply with**
3 **this Order, any unserved Defendants will be dismissed.**

4 Dated this 4th day of April, 2025.

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James A. Teilborg
Senior United States District Judge

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⁵ Once Plaintiff is aware of Defendant John Doe I's real name, Plaintiff must file an amended complaint substituting that name. *See* Fed. R. Civ. P. 15(a)(2); *Ivan v. Wells Fargo Bank, N.A.*, CV 12-1065-PHX-JAT, 2012 WL 3095050, at *2 (D. Ariz. July 30, 2012) (citing Fed. R. Civ. P. 10(a)) ("Generally, the Federal Rules of Civil Procedure do not permit the use of Doe defendants.").